

July 13, 2020

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**GROUP SETTling DEFENDANTS REQUEST
THAT THIS LETTER AND APPENDIX
NOT BE FILED ON THE PUBLIC DOCKET**

The Honorable Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Contant, et al. v. Bank of Am. Corp., et al.*,
No. 17 Civ. 3139 (LGS) (S.D.N.Y.)

Dear Judge Schofield:

We write on behalf of all Group Settling Defendants in the above-referenced action. As Your Honor requested at the July 9, 2020 preliminary approval hearing, we enclose an appendix listing the amounts each Group Settling Defendant has agreed to contribute to the Settlement Fund.

Group Settling Defendants respectfully request that this letter, its appendix, and their contents be reviewed *in camera* and not be placed on the docket or otherwise made public. The negotiation of the allocation among Group Settling Defendants was intended by the parties to be and to remain confidential, and that allocation reflects strategic decisions and work product of the Group Settling Defendants in their common interest. Group Settling Defendants respectfully submit that public disclosure of this information could unfairly disadvantage them and inhibit settlement discussions in other future litigations. (For example, public disclosure could be perceived by adverse parties as revealing the negotiating positions and/or willingness to settle of specific defendants that could later be used against them.) Group Settling Defendants also respectfully submit that the ability to confidentially allocate the group settlement amount among Group Settling Defendants helped to facilitate settlement discussions with plaintiffs in this case, and to do so in a manner that did not disadvantage the settlement classes.

Moreover, Group Settling Defendants respectfully submit that public disclosure of the allocation of the group settlement here would not advance any interest of the settlement classes. It would not impact the extent of their recoveries; nor would it assist a class member in assessing the fairness of the overall settlement to him/her in relation to a decision to accept the settlement or opt-out. Accordingly, it is not uncommon for courts, including in this District, to approve a settlement for a total amount with a group of defendants without a public record of the allocation of that settlement amount among those defendants. *See, e.g., In re GSE Bonds Antitrust Litig.*, 1:19-cv-01704 (JSR) (S.D.N.Y. Jun. 18, 2020) (approving a twelve-bank “Group Defendants” settlement

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without making public the underlying allocation); *Laydon v. Mizuho Bank, Ltd., et al.*, 1:12-cv-03419 (GBD) (S.D.N.Y. Dec. 19, 2019) (approving a three-bank group defendants settlement without making public the underlying allocation). Nor is it unusual for courts to review certain information about class action settlements *in camera*, particularly where, as here, “the respective financial obligations” concerning the payment of a settlement amount were neither “negotiated with the plaintiff classes,” nor “seen by their counsel,” and “d[id] not affect the rights of, or consideration to, the proposed Settlement classes.” *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 204-05 (S.D.N.Y. 2005) (preserving the confidentiality of a side agreement concerning “the respective financial obligations of the Issuers’ insurers in connection with the proposed partial settlement”).¹

Respectfully submitted,

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¹ If, notwithstanding this letter, the Court plans to make any of these materials public, the Group Settling Defendants respectfully request the opportunity to confidentially discuss with the Court any questions or concerns that the Court may have in light of this letter or appendix.

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The Honorable Lorna G. Schofield
Appendix to Group Settling Defendants'
Confidential Letter to the Court
July 13, 2020

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- Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Inc., collectively, shall be responsible for [REDACTED] of the Settlement Amount;
- Barclays Bank PLC and Barclays Capital Inc., together, shall be responsible for [REDACTED] of the Settlement Amount;
- BNP Paribas, BNP Paribas US Wholesale Holdings Corp., and BNP Paribas Securities Corp., collectively, shall be responsible for [REDACTED] of the Settlement Amount;
- Credit Suisse AG and Credit Suisse Securities (USA) LLC, together, shall be responsible for [REDACTED] of the Settlement Amount;
- Deutsche Bank AG shall be responsible for [REDACTED] of the Settlement Amount;
- The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC), together, shall be responsible for [REDACTED] of the Settlement Amount;
- HSBC Bank plc, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc., collectively, shall be responsible for [REDACTED] of the Settlement Amount;
- JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A., together, shall be responsible for [REDACTED] of the Settlement Amount;
- Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc, collectively, shall be responsible for [REDACTED] of the Settlement Amount;
- RBC Capital Markets, LLC, shall be responsible for [REDACTED] of the Settlement Amount;
- The Royal Bank of Scotland plc (now known as NatWest Markets Plc) and RBS Securities Inc. (now known as NatWest Markets Securities Inc.), together, shall be responsible for [REDACTED] of the Settlement Amount; and
- UBS AG, UBS Group AG, and UBS Securities LLC, collectively, shall be responsible for [REDACTED] of the Settlement Amount.